

Town of Westford Personnel Policies and Procedures

5.6 Sexual Harassment

Policy:

The Town fully supports the right of all persons to hold employment in, or enjoy access to, all facilities in an atmosphere which promotes equal opportunities and prohibits discriminatory practices, including sexual harassment. It is the Town's policy to maintain an environment that is free of sexual harassment. Sexual harassment by managers, supervisors, employees, and members of the public who use Town facilities, vendors, and contractors is unlawful and unacceptable and will not be tolerated. Further, any retaliation against an individual complaining of sexual harassment or cooperating with the investigation of sexual harassment is similarly unlawful and also will not be tolerated.

We view allegations and concerns about sexual harassment very seriously, and we will respond quickly and decisively to instances when complaints of sexual harassment are brought to the Town's attention.

Where it has been demonstrated to the Town's satisfaction that such harassment has occurred, the Town will promptly deal with and eliminate any harassment and/or other unlawful conduct. The Town will impose such corrective action as is necessary up to and including termination.

Please note that while this policy sets forth the Town's goals of promoting a workplace that is free of sexual harassment, it should not be construed as preventing, limiting, or delaying the Town from taking disciplinary action against any individual up to and including termination, in circumstances where the Town deems disciplinary action appropriate regardless of whether such conduct satisfies the definition of sexual harassment.

Definition of Sexual Harassment:

A. The legal definition of sexual harassment:

Sexual harassment is a form of sex discrimination that is illegal under both Title VII of the Civil Rights Act of 1964 and G.L. c 151B. These laws provide that unwelcome sexual advances, requests for sexual favors, and other physical or verbal conduct of a sexual nature constitute sexual harassment when:

- Submission to or rejection of such advances, requests or conduct is made whether explicitly a term or condition of an individual's employment or a basis for employment decisions affecting the individual; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, humiliating or sexually offensive work environment.

These definitions are broad and include any sexually orientated conduct, whether it is intended to harass or not, that is unwelcome and has the effect of creating a workplace environment that is hostile, offensive, and intimidating or humiliating to either male or female workers.

B. Examples of conduct that can constitute unlawful sexual harassment:

Sexual harassment does not refer to behavior or occasional compliments of a socially acceptable nature. It refers to behavior that is not welcome, that is personally offensive and that fails to respect the rights of others. Sexual harassment occurs in a variety of situations which share a common element: the inappropriate introduction of sexual activities or comments into the work environment.

Sexual harassment often involves relationships of unequal power. Such situations may contain elements of coercion, such as when compliance with requests for sexual favors becomes a criterion for granting privileges or favorable treatment on the job. However, sexual harassment may also involve relationships among "equals," such as when repeated advances or demeaning verbal comments by a co-worker towards another co-worker have a harmful effect on a person's ability to perform his or her work. Sexual harassment can also involve employee behavior directed at non-employees or non-employee behavior directed at employees.

This behavior is unacceptable in the workplace itself and in other work-related settings such as work-related social events and travel.

Examples of sexual harassment include, but are not limited to:

- Repeated, unwanted sexual flirtations, advances, or propositions;
- Continued or repeated verbal abuse or innuendo of a sexual nature;
- Uninvited physical contact such as touching, hugging, patting, brushing or pinching;
- Verbal comments of a sexual nature about an individual's body or sexual terms used to describe an individual;
- Display of sexually suggestive objects, pictures, posters or cartoons;
- Continued or repeated jokes, language, epithets, or remarks of a sexual nature in front of people who find them offensive;
- Comments or inquiries about a person's body or activity, deficiencies, or prowess; prolonged staring or leering at a person;
- Making obscene gestures or suggestive or insulting sounds, such as whistling;
- The demand for sexual favors accompanied by an implied or overt threat concerning an individual's employment status or promises of preferential treatment, such as favorable performance reviews, salary increases, promotions, increased benefits, or continued employment;
- Indecent exposure;
- Assault or coerced sexual acts.

C. Dispelling common myths about harassers and victims:

Contrary to popular belief, sexual harassment is not limited to prohibited behavior by a male employee toward a female employee or by a supervisory employee toward a non-supervisory employee. Sexual harassment can be found in any of the following less "traditional" situations:

1. A man as well as a woman may be a victim of sexual harassment, and a woman as well as a man may be the harasser.

2. The harasser does not have to be the victim's supervisor. He or she may be a supervisory employee who does not directly supervise the victim, a co-worker, or in some circumstances, a non-employee such as a member of the public who uses Town facilities.
3. The victim does not have to be the opposite sex of the harasser.
4. The victim does not have to be the person at whom the unwelcome sexual conduct is directed; the victim may be someone who is affected by such conduct even though it is directed by another person. For example, the sexual harassment of one employee may create an intimidating, hostile, humiliating, or offensive work environment for a coworker, or may interfere with the coworker's work performance. In addition, consensual sexual behavior in the office between two employees may be offensive to a third employee or result in favoritism that harms the third employee.
5. Sexual harassment does not depend on the victim's suffering an economic injury, such as losing a promotion, as a result of the harasser's conduct. As the examples of improper conduct listed above show, sexual harassment can occur whenever unwelcome conduct of a sexual nature creates an intimidating, hostile, humiliating, or offensive work environment.

Employee Responsibilities:

Each employee of the Town of Westford is personally responsible for ensuring that his or her conduct does not sexually harass any other employee or non-employee in the workplace. Each employee is responsible for cooperating in any investigation of alleged sexual harassment if requested to do so by the person conducting the investigation.

Supervisor and Manager Responsibilities:

It is the responsibility of each supervisor and manager to strictly enforce the terms of this policy. Supervisors, managers, or Department Heads who become aware of incidents of sexual harassment in their departments, even in the absence of a formal complaint, should take appropriate actions to eliminate the conduct. Supervisors and managers may seek further information and guidance from the Human Resources Department.

Ways of Dealing with Sexual Harassment:

A. Self-help

If an individual believes that he or she is being sexually harassed, the most immediate goal is to stop the offensive conduct. Individuals should:

- Promptly and firmly confront whoever is doing the harassing.
- State that his/her conduct offends, intimidates, and/or embarrasses you.
- Describe how the harassment negatively affects your work.
- Request that he or she stop the conduct immediately.
- Say things like: "Please don't touch me. I don't like it. It makes me uncomfortable." "I don't think jokes like that are funny. Please don't tell them when I am in the room." "I'd like it a lot

better if you'd comment on the quality of my work rather than on the way I look.", "My name is _____ not 'honey'."

If practical, bring a witness with you for this discussion. After the discussion, write a summary of the conversation, including the date and name of anyone who accompanied you.

In all instances where an individual believes that he or she has been sexually harassed, it is helpful, but not necessary, to write down a description of the offensive conduct, the date or dates on which it took place, and the names of anyone who witnessed the conduct or heard offensive remarks.

B. Seeking Guidance

In some instances, confronting the harasser directly may be too intimidating or uncomfortable, particularly when the harasser is an immediate supervisor. An individual who wants to discuss his/her situation may contact the Town's Human Resource Director for more information about sexual harassment and the complaint procedure in order to decide whether to make a complaint.

C. Formal Complaint

1. An individual who believes that they have been subjected to sexual harassment has a right to file a formal complaint with his/her supervisor or, if appropriate, the Human Resource Director. This may be done orally or in writing. The supervisor and/or the Director of Human Resource will conduct an investigation in a fair and expeditious manner.

The investigation will include a private interview with the person filing the complaint and with any witnesses. An interview with the alleged harasser will also be conducted. Once the investigation has been completed, the supervisor and/or the Director of Human Resources will present the findings to the appropriate Department Head.

2. If an investigation of a complaint of sexual harassment reveals that an employee, supervisor, manager or Department Head has engaged in actions or conduct constituting sexual harassment, the Department Head and/or the Town Manager will act promptly to eliminate the offending conduct and take appropriate disciplinary action, up to and including discharge. The disciplinary action taken will depend upon the seriousness of the violation.

Disciplinary action will be taken by the appropriate Department Head, in accordance with the Human Resources Policy and Procedures Manual, appropriate union contract, or other appropriate disciplinary procedure. Such action may include: counseling, informal or formal reprimands, oral or written warnings, suspension, demotion, transfers, and other formal sanctions including termination of employment. It is the responsibility of all supervisors, managers, and Department Heads to strictly enforce the terms of this policy.

3. Any supervisor, manager, or Department Head who prevents or attempts to prevent an individual from making a complaint of sexual harassment or who fails to cooperate with or interfere in any way with the investigation of such a complaint, will be subject to disciplinary action.

4. *No retaliation for Filing Complaint of Sexual Harassment:* No employee, supervisor, or manager shall be retaliated or discriminated against in any way for making a complaint of sexual harassment or for assisting in the investigation of such a complaint. Retaliation against any person for reporting sexual harassment is unlawful and will not be tolerated; further, it will subject the retaliator(s) to disciplinary action.
5. Any non-employee found to have committed an act of sexual harassment may be removed from Town premises, or other appropriate action may be taken.
6. *Confidentiality:* All actions taken to investigate and resolve complaints through this procedure shall be conducted with as much confidentiality as possible without compromising the thoroughness of the investigation. The individual filing the complaint will be informed of the results of the investigation.
7. If an employee would like to file a sexual harassment complaint, he/she may do so by contacting their supervisor at his/her office or the Director of Human Resources. These persons are also available to discuss any concerns you may have and to provide information to you about the Town's policy on sexual harassment and the complaint process.

D. Appeals Process

Employees who believe they have been unfairly disciplined may appeal the decision to the Town Manager. This request for review must be put in writing to the Town Manager, and must be received within one calendar week of the Department Head's decision.

E. Union Grievances

Town employees who are union members may elect to file a grievance under their collective bargaining agreement.

F. Other Options

Should employees choose to pursue a course of action outside of the Town, several options exist. They may file a complaint with the Massachusetts Commission Against Discrimination (MCAD) and/or the Equal Employment Opportunity Commission. These government agencies handle complaints of job discrimination, including sexual harassment, and can be reached at:

Massachusetts Commission Against Discrimination
One Ashburton Place, Room 601
Boston, MA 02108
617-727-3990

U.S. Equal Employment Opportunity Commission
1 Congress Street
Boston, MA 02114
617-565-3200

Please note that these agencies have a short time period for filing complaints. You must file a complaint with the MCAD within six months of the occurrence, and with the EEOC within 180 days.

In addition to the above mentioned government agencies, the Town's Employee Assistance Program (EAP) assists employees who are dealing with the stress of harassment or seeking guidance for addressing the behavior. The Town's EAP may be contacted through their 24/7 hotline number. This number can be found on the Town's Human Resources webpage, you can contact Human Resources at 978-399-2915, or you can ask a supervisor or Department Head for the information. When you call please indicate that you are with the Town of Westford.

All people have the right to engage attorneys to represent their interests. This list is not exhaustive and is not intended to represent legal advice or referral. All employees are encouraged to avail themselves of the complaint procedure offered by the Town of Westford.

Sexual Harassment Coordinators:

Town Manager
Director of Human Resources

If you have any questions regarding this policy, please contact the Director of Human Resources.